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AMES CONSTRUCTION, INC.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

AMES CONSTRUCTION, INC., a Minnesota
corporation,

Plaintiff,

v.

CLARK COUNTY, a political subdivision of the
State of Nevada; and CLARK COUNTY
DEPARTMENT OF PUBLIC WORKS; DOES I
through X; and ROE CORPORATIONS I
through X,

Defendants.

CLARK COUNTY, a division of the State of
Nevada,

Counter-Claimant,

vs.

AMES CONSTRUCTION, INC., a
Minnesota corporation,

Counter-Defendant.

CASE NO.: 2:18-cv-00299-JCM-GWF

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

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STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

Plaintiff/Counter-Defendant, AMES CONSTRUCTION, INC. (“AMES”), by and through its counsel of record, PEEL BRIMLEY LLP, and Defendants, CLARK COUNTY and CLARK COUNTY DEPARTMENT OF PUBLIC WORKS (collectively referred to as the “County”), by and through their counsel of record, BROWNSTEIN HYATT FARBER SCHRECK, LLP, hereby stipulate and agree that the use and handling of Confidential Information (as defined herein) in these proceedings shall be governed by and subject to the provisions below:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in these Proceedings may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting these Proceedings would be warranted and consistent with FRCP 26(c) and the public policy under Federal Law and the State of Nevada. This Order shall be applicable to and govern all Confidential Information in any form (including without limitation information contained in or on any tangible thing) produced or disclosed by or on behalf of any producing party in connection with these Proceedings. This Order is not intended to foreclose any producing party’s right to make a valid objection to any discovery request(s) on privacy, trade secret, or confidentiality grounds.

2. DEFINITIONS

“Document” or “documents” means information, recordation and storage media *of any kind*, including, but not limited to, written, photographic, audio, video, magnetic, electronic, optical, or other media. This definition also includes, but is not limited to, written, audio, or video productions of oral statements or events; answers to requests for documents in lieu of submission of documents; and original versions and reproductions by whatever means.

The term “producing party” includes any party and any nonparty who produces information or documents incident to discovery in these Proceedings.

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1 The term “these Proceedings” means the proceeding designated in the caption to this
 2 Order and all appeals or interlocutory proceedings arising out of the proceeding designated in
 3 the caption to this Order.

4 The term “Confidential Information” means:

- 5 a) confidential financial information and analyses, including information about
- 6 employee compensation;
- 7 b) tax data;
- 8 c) confidential business information;
- 9 d) confidential bank statements;
- 10 e) confidential portions, if any, of minutes of meetings;
- 11 f) personal financial information; or
- 12 g) other personally or commercially sensitive or proprietary information such as
- 13 trade secrets or market strategies.

14 **3. SCOPE**

15 The protections conferred by this Stipulated Confidentiality Agreement and Protective
 16 Order cover not only Confidential Information (as defined above), but also any information
 17 copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations
 18 thereof, plus testimony, conversations, or presentations by the parties or their counsel to or in
 19 court or in other settings that reveal Confidential Information.

20 All material designated as “Confidential” or information derived therefrom, shall be
 21 used solely for purposes of these Proceedings and shall not be used for any other purpose,
 22 including, without limitation, any business or commercial purpose or any other litigation.

23 **4. DURATION**

24 Even after the termination or settlement of these Proceedings, the confidentiality
 25 obligations imposed by this Stipulated Confidentiality Agreement and Protective Order shall
 26 remain in effect until a producing party agrees otherwise in writing or a court order otherwise
 27 directs.

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1 **5. DESIGNATING CONFIDENTIAL INFORMATION**

2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated
3 Confidentiality Agreement and Protective Order, or as otherwise stipulated or ordered, material
4 that qualifies for protection under this Stipulated Confidentiality Agreement and Protective
5 Order must be clearly so designated before the material is disclosed or produced. Designation
6 in conformity with this Stipulated Confidentiality Agreement and Protective Order requires:

7 (a) Information in documentary form (apart from transcripts of depositions or other
8 pretrial or trial proceedings), may be designated by any party as Confidential
9 Information by marking each page of the document so designated as
10 “Confidential.” Parties other than the Producing Party may likewise designate
11 such materials for confidential treatment by written notice. A producing party
12 that makes original documents or materials available for inspection need not
13 designate them for protection until after the inspecting party has indicated which
14 material it would like copied and produced. After the inspecting party has
15 identified the documents it wants copied and produced, the producing party
16 must determine which documents, or portions thereof, qualify for production
17 under this Stipulated Confidentiality Agreement and Protective Order, and
18 before producing the specified documents, the producing party must mark each
19 page of the document as “Confidential.”

20 (b) Testimony given in deposition or in other pretrial or trial proceedings: Any
21 party may designate deposition testimony as Confidential Information by
22 indicating on the record at the deposition that the testimony is Confidential
23 Information and is disclosed subject to the provisions of this Order. The
24 reporter shall mark all copies of the transcript “CONFIDENTIAL: SUBJECT
25 TO PROTECTIVE ORDER” and shall include a notice of the pages and lines of
26 the transcript that should be treated as Confidential Information.

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- i. Any party may designate information disclosed at such deposition as Confidential Information by notifying all of the parties in writing within thirty days of receipt of the transcript of the deposition, of the specific pages and lines of the transcript that should be treated as Confidential Information. Each party shall attach a copy of the written notice to the face of each copy of the transcript in his/her possession, custody or control.
- ii. If a document that has previously been designated as Confidential Information is made an exhibit to a deposition, the deposition transcripts shall be marked “CONFIDENTIAL,” and the list of exhibits included by the reporter with any transcript shall indicate which exhibits have been designated as Confidential Information.
- iii. If the Court’s rules require the filing of depositions with the Court or if such filing is required in a particular instance, any deposition transcript or exhibits containing Confidential Information shall be marked “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER” and filed under seal.
- (c) Information produced in some form other than documentary, and for any other tangible items, the producing party shall affix in a prominent place on the exterior of the container or containers in which the information or item is stored the appropriate legend (“Confidential”). If that matter is stored or recorded electronically (including information databases, images, or programs stored on computers, discs, networks, or backup tapes) and a legend cannot be affixed upon it, the producing party may designate such material as “Confidential” by cover letter identifying the Confidential Information. Parties other than the producing party shall also have the right to designate such materials for confidential treatment in accordance with this Order by written notice.

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(d) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” does not waive the party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” after the material was initially produced, the receiving party(ies), on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order. As used in this Order, an act is “timely” if it occurs within 10 days and does not unduly prejudice another party.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

Timing of Challenges. Unless a challenge to a producing party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge within 30 days after the original designation is disclosed.

Meet and Confer. If counsel for any party disagrees with the designation of Confidential Information by a producing party, counsel shall try first to resolve their dispute informally and in good faith.

Judicial Intervention. If counsel cannot resolve the dispute, the objecting party may seek appropriate relief from the Court. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed herein. The burden of persuasion in any such challenge proceeding shall be on the producing party. The information that is the subject of dispute or motion under this paragraph shall be treated as Confidential Information pending resolution of the objection by the Court.

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1 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 All Confidential Information produced or exchanged by the parties or by third parties in
3 the course of these Proceedings shall be used solely for the purpose of conducting these
4 Proceedings and for no other purpose whatsoever, and shall not be disclosed to any person
5 except in accordance with the terms of this Order.

6 Confidential Information shall not be disclosed or communicated to anyone other than
7 the following persons:

- 8 (a) Attorneys of record for the parties in these Proceeding including the respective
9 partners, of counsel, associates and employees of such attorneys to whom it is
10 reasonably necessary that the material be shown for purposes of these
11 Proceeding;
- 12 (b) The parties in these Proceeding, including their respective officers, directors,
13 employees, and agents.
- 14 (c) Independent experts and consultants retained by a party to testify or perform
15 other services in connection with these Proceedings, provided that such expert
16 or consultant first executes a copy of the Agreement To Be Bound by and
17 Comply with Protective Order in the form attached as Exhibit A;
- 18 (d) Court reporters in connection with their duties in providing recording and
19 transcription services for depositions conducted in connection with these
20 Proceedings; and
- 21 (e) Personnel of any Court, including judges, official reports, law clerks, and other
22 authorized personnel, to the extent necessary for them to perform their duties in
23 connection with these Proceedings.

24 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
26 Confidential Information to any person or in any circumstance not authorized under this Order,
27 the party must immediately (a) notify in writing the producing party of the unauthorized
28 disclosure(s), (b) use its best efforts to retrieve all copies of the Confidential Information, (c)

1 inform the person or persons to whom unauthorized disclosures were made of all the terms of
 2 this Order, (d) request such person or persons return or destroy the Confidential Information;
 3 and (e) request such person or persons to execute the Agreement To Be Bound by and Comply
 4 with Protective Order in the form attached as Exhibit A.

5 All parties who are entitled to disclosure of any Confidential Information shall not
 6 under any circumstances sell, offer for sale, advertise, or publicize the Confidential
 7 Information, or the fact that such persons have obtained Confidential Information from any
 8 producing party.

9 **9. FILING PROTECTED MATERIAL**

10 Without written permission from the producing party or a court order secured after
 11 appropriate notice to all interested persons, a party may not file in the public record in this
 12 action any Confidential Information. A party may file Confidential Information with the Court
 13 *under seal* by following the applicable court rules.

14 **10. FINAL DISPOSITION**

15 Within thirty (30) days of the conclusion of these Proceedings, all Confidential
 16 Information shall be either: (1) returned to the producing party, or (2) destroyed under the
 17 supervision of counsel of record for the recipient. The Court is excluded from the
 18 requirements of this Paragraph.

19 **11. MISCELLANEOUS**

20 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 21 its modification by the court in the future.

22 Right to Assert Other Objections. Nothing in this Order may be construed to restrict
 23 any Party's right to challenge the admissibility or use of Confidential Information on any
 24 ground other than confidentiality, including but not limited to competence, relevance, or
 25 privilege.

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1 This Order shall not bar any attorney of record in these Proceedings in the course of
2 rendering advice to his/her client with respect to these Proceedings from conveying to any
3 party to these Proceedings his/her general evaluation of any Confidential Information produced
4 or exchanged in these Proceedings; provided, however, that in rendering such advice and
5 otherwise communicating with his/her client, the attorney shall not disclose the specific
6 contents of any Confidential Information produced by another party or third party which
7 disclosure would be contrary to the terms of this Order.

8 Subpoenas and Other Court Orders. If Confidential Information in the possession of a
9 Party is sought by subpoena or any other form of compulsory process of any court,
10 administrative or legislative body, or of any person or tribunal purporting to have authority to
11 seek such Confidential Information by compulsory process, the Party to whom the process is
12 directed shall within three (3) business days give written notice of such process to the Party
13 designating the information as confidential (the "Designating Person"), and shall not make
14 production of such information until ten (10) business days after the Designating Person has
15 received written notice of such process as required herein (unless otherwise ordered to do so by
16 the court, administrative or legislative body, in which case the Party to whom such process is
17 directed shall provide the Designating Person as much notice as reasonably possible while not
18 violating such order). Compliance with any order directing production pursuant to a subpoena
19 of any Confidential Information shall not constitute a violation of this Stipulation and Order.
20 Nothing herein shall be construed as requiring the party to whom a subpoena is directed or
21 anyone else covered by this Stipulation and Order to challenge or appeal any order directing
22 production of Confidential Information covered by this Stipulation and Order, or to subject
23 himself or itself to any penalties for non-compliance with any legal process or order, or to seek
24 any relief from this Court.

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No Waiver. Notwithstanding any of the forgoing, nothing herein shall be construed as a waiver of any party's right to seek the disclosure of Confidential Information in other litigation involving that party through the applicable discovery rules and procedures governing that litigation.

IT IS SO STIPULATED this ____ day of August, 2018.

PEEL BRIMLEY LLP

**BROWNSTEIN HYATT FARBER
SCHRECK, LLP**

/s/ Steven D. Meacham

/s/ Travis F. Chance

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*Attorneys for Plaintiff
AMES CONSTRUCTION, INC.*

*Attorneys for Defendants CLARK COUNTY
and CLARK COUNTY DEPARTMENT OF
PUBLIC WORKS*

ORDER

IT IS SO ORDERED this this 7th day of August, 2018.


UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

AMES CONSTRUCTION, INC., a Minnesota corporation,

Plaintiff,

v.

CLARK COUNTY, a political subdivision of the State of Nevada; and CLARK COUNTY DEPARTMENT OF PUBLIC WORKS; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND ALL RELATED CROSS-ACTIONS.

CASE NO.: 2:18-cv-00299-JCM-GWF

AGREEMENT TO BE BOUND BY AND COMPLY WITH PROTECTIVE ORDER

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulated Confidentiality Agreement and Protective Order (the "Protective Order") entered by the Court on August ___, 2018, and that I have been given a copy of and have read the Protective Order. I understand the terms of the Protective Order, I agree to be fully bound by the Protective Order, and I hereby submit to the jurisdiction of the United States District Court of Nevada for purposes of enforcement of the terms and restrictions of the Protective Order.

I further acknowledge and agree that the terms of the Protective Order are enforceable against me as a contract by any party both during and after the conclusion of these Proceedings.

Date: _____

Signature